



U.S. Department of Justice

Office of Legal Policy

Assistant Attorney General

Washington, D.C. 20530

August 28, 2017

EX PARTE OR LATE FILED

Ex Parte

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

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SEP 05 2017  
FCC Mail Room

Re: Promoting Technological Solutions to Combat Contraband Wireless Device Use  
in Correctional Facilities – GN Docket 13-111

Dear Ms. Dortch:

In response to the Further Notice of Proposed Rulemaking in the above captioned proceeding,<sup>1</sup> the United States Department of Justice (“Department”) writes in support of the Federal Communications Commission’s efforts to combat contraband cellphones in correctional facilities. Contraband cellphones are an ongoing correctional security and public safety concern for the Bureau of Prisons (“BOP”), as well as for our state and local correctional partners across the country. BOP confiscated 5,116 cellphones from its facilities in 2016. Based on data available for the first six months, BOP projects that confiscations will increase by 28% in 2017. The Department understands that the problem is significantly worse in state and local correctional facilities.

Contraband cellphones are used to perpetuate gang activity, to run criminal enterprises, to facilitate the commission of violent crimes, and to thwart the efforts of law enforcement. In one recent case, for example, the Department prosecuted an inmate in Tennessee who used a smuggled cellphone in prison to upload child pornography onto the Internet and to communicate with another individual about the rape of the inmate’s young daughter.<sup>2</sup> In another case, a gang member incarcerated in a North Carolina facility used a contraband cellphone to call in a “hit” on

<sup>1</sup> Promoting Technological Solutions to Combat Contraband Wireless Device Use in Correctional Facilities, *Report and Order and Further Notice of Proposed Rulemaking*, GN Dkt. No. 13-111, FCC 17-25 (rel. Mar. 24, 2017), available at [https://apps.fcc.gov/edocs\\_public/attachmatch/FCC-17-25A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/FCC-17-25A1.pdf).

<sup>2</sup> United States’ Sentencing Memorandum and Response to Defendant’s Motion for Variance, *United States v. Christopher David Grippe*, Case No. 16-CR-114, Dkt. #25 (July 18, 2017).

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the prosecutor's father who was subsequently kidnapped and assaulted by the inmate's associates.<sup>3</sup> Similarly horrific stories abound.

The Department intends to address this threat promptly. We commend the Commission's initiative and encourage further efforts to deal with this public safety issue. Addressing this problem should be a chief priority of both the Department and the Commission.

The Department appreciates and supports the Commission's rules to streamline the process for approval of contraband interdiction systems ("CIS"), such as managed access systems ("MAS"). BOP has examined MAS deployments at state and local correctional facilities and has conducted a proof-of-concept to determine MAS efficacy in a medium-security BOP facility. Based on BOP's assessment, the Department is concerned that MAS and other CIS technologies may be prohibitively expensive, particularly in those locations where only one provider is available and market competition cannot assist in driving down costs. In December 2015, the BOP issued a Request for Information ("RFI") for an active or passive communications blackout solution within a defined secure prison perimeter. In evaluating the responses across the various locales of BOP facilities (rural, suburban, and metropolitan), BOP found that cost estimates ranged from \$1 million to \$2 million per correctional facility. The Department encourages any effort to improve market competition to make CIS more affordable.

In response to the Commission's specific request for information, the Department further submits the following comments:

- **Requiring wireless carriers to terminate service to contraband devices that have been found to be operating inside a correctional facility and how that process should work.** The Department supports this rule change with some caveats. The rules should facilitate expeditious termination of service to contraband cellphones and must allow for termination of multiple devices on a single request. Under the Cell Phone Contraband Act of 2010,<sup>4</sup> unauthorized cellphones are prohibited in federal facilities; therefore, lengthy justification for termination of service should not be required. Instead, the primary goal of the request should be to identify the device and verify to the wireless carrier that the person requesting termination is an authorized official. Additionally, termination of service should be carried out on an expedited timeframe to mitigate harm to the public. We also support the Commission's decision to continue to explore the possibility of disabling contraband cell phones.
- **Whether other technological solutions for stopping the use of contraband wireless devices are viable from a technical, legal, policy, and cost-benefit perspective.** The Department supports the exploration of additional technology solutions that provide viable, pragmatic options. In particular, the Department believes that cellphone jamming merits continued study. The most recent federal testing of jamming in a prison context

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<sup>3</sup> See *Blood Gang Leader Used Prison Cellphone to Order Hit on Prosecutor's Father*, CHARLOTTE OBSERVER (May 31, 2017), available at <http://www.charlotteobserver.com/news/local/crime/article152334207.html>.

<sup>4</sup> Pub. L. 111-225, Aug. 10, 2010, 124 Stat. 2387 (as codified, 18 U.S.C. § 1791(d)(1)(F)).

was conducted in 2010, and the technology has continued to improve. The Department will continue to work with the National Telecommunications and Information Administration, other federal agencies, state and local authorities, carriers, technology companies, and other stakeholders to explore the viability of jamming, as well as the potential impact on first responder and other lawful uses of wireless cell service. The Department encourages the Commission to continue to evaluate its authorities in this area.<sup>5</sup>

Thank you for considering the Department's views.

Sincerely,



Beth A. Williams  
Assistant Attorney General

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<sup>5</sup> The Department understands there is a question whether state and local correctional facilities may employ this option under existing federal law. While 47 U.S.C. § 333 generally prohibits “willfully or maliciously” interfering with an authorized station’s radio communications, the statute does not necessarily preclude the Commission’s authorization of justifiable law enforcement use of targeted jamming to prevent inmates from using contraband cellphones to further their illegal activities.